

18 January, 2023

**Via online submission**

National FOIA Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2310A)  
Washington, DC 20460

American Bird Conservancy (“ABC”) hereby requests disclosure, under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and implementing regulations, 43 C.F.R. § 2.1 et seq., of the records described below in the possession, custody, or control of the United States Environmental Protection Agency (“EPA”).

**Background**

The EPA is currently reviewing the registrations of the active ingredients imidacloprid, clothianidin, thiamethoxam, dinotefuran, acetamiprid, and other neonicotinoids. EPA has approved neonicotinoids for use as seed coatings, spray applications, and soil drenches. Neonicotinoids primary use is as a seed coating for row crops including corn, soybeans, and wheat.

When a pesticide product is registered, the burden of testing and reporting potential environmental impacts is placed on the registrants unless the EPA requests otherwise. According to the EPA’s Pesticide Registration Manual Chapter 1<sup>1</sup>:

*An applicant who wishes to obtain a registration for its own pesticide product is responsible for submitting or citing all of the information and data that are required to support the registration. The information required includes: forms, proposed product labeling, technical and scientific data that meet the data requirements related to the specific product the applicant intends to produce, and statement of how the applicant will comply with any data compensation requirements.*

Furthermore, registrants are obligated to provide information on any adverse effects of a pesticide that have not been previously submitted to the Agency in accordance with FIFRA section 6(a)(2) (40 CFR 152.125).<sup>2</sup>

A mounting body of evidence indicates that the continued use of neonicotinoids as a seed treatment poses undue risks to wildlife and human health. An important part of recommending mitigations and risk-reducing policy as EPA moves forward with reviewing neonicotinoids is understanding the circumstances surrounding their initial registration and subsequent registration reviews, especially including but not limited to, meetings with neonicotinoid product registrants (pesticide industry) and responses to preliminary EPA assessments.

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<sup>1</sup> <https://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-1-overview-requirements-pesticide#registrant>

<sup>2</sup> <https://www.law.cornell.edu/uscode/text/7/chapter-6>

## Documents Requested

1. All documents inviting, recording, summarizing or otherwise referring to any meetings between EPA officials and representatives from manufacturers of the neonicotinoids Gaucho ®, Poncho ®, and Cruiser ® during the initial pesticide registration process and the registration review process.
2. All documents consisting or containing or referring to any responses from industry representatives to EPA preliminary assessments of products containing the active ingredients clothianidin, imidacloprid, and thiamethoxam from the years 1992-2012.

## Request for a Fee Waiver

FOIA provides for a fee waiver when “disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 43 C.F.R. § 2.45(a)(1)-(2). The disclosure ABC seeks meets both of these requirements.

The requested documents clearly involve operation of the government. The EPA is responsible for reviewing pesticide products submitted by registrants and mitigating these uses as necessary.

ABC has no commercial interests that would be furthered by the requested disclosure. ABC is a not-for-profit organization, does not sell information obtained under FOIA, and will realize no commercial benefit from the disclosure of the requested records. Hence ABC is entitled to a fee waiver.<sup>3</sup>

Please provide the document requested above regardless of your fee waiver decision, for ABC will pay fees under protest under 43 C.F.R. § 2.37 *et seq.*

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<sup>3</sup> In the alternative, ABC qualifies as a “representative of the news media” that is entitled to a reduction of fees under FOIA because ABC routinely disseminates information regarding important bird conservation issues through its web-site, in newsletters, and through similar formats. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).